

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LEONARD BROOKS and GARNETT BROOKS, :  
 :  
 Plaintiffs, :  
 :  
 -against- :  
 :  
 CALVIN W. MAXWELL, JR., :  
 :  
 Defendant. :

REPORT AND  
RECOMMENDATION  
TO THE HONORABLE  
LEONARD B. SAND

05 Civ 9429 (LBS) (EM)

USDC SDNY  
DOCUMENT  
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I. Introduction

This diversity personal injury case arising out of a motor vehicle accident in South Hackensack, New Jersey, comes before the Court in connection with the parties' cross-motions. By motion dated August 21, 2006, plaintiffs Leonard and Garnett Brooks ("Garnett") seek a default judgment because defendant Calvin Maxwell, Jr. ("Maxwell") has failed to answer the complaint. By motion dated September 27, 2006, Maxwell has moved to dismiss the complaint, pursuant to Rule 12(b)(2), (3), and (5) of the Federal Rules of Civil Procedure on the theories that (i) this Court lacks jurisdiction because he is a New Jersey resident and the case arises out of an accident in that state, and (ii) he never was properly served with process before the expiration of the applicable statute of limitations. Maxwell also contends that venue in this District is improper. For the reasons set forth below, Maxwell's motion should be granted and this action dismissed.

MEMO ENDORSED

MEMO ENDORSED

*Endorsement*  
*Knowing the allegations to be*  
*without merit the Court*  
*adopts the Report and*  
*the case is dismissed. Cross-*  
*motion is denied. So ordered*  
*to Sand*  
*12/21/06*